



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

C-834-808

Silicon Metal from the Republic of Kazakhstan: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of silicon metal from the Republic of Kazakhstan (Kazakhstan). The period of investigation is January 1, 2016, through December 31, 2016.

DATES: Effective [Insert date of publication in the *Federal Register*.]

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova or Rebecca Janz, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1280 or (202) 482-2972, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). The Department published the notice of initiation of this investigation on April 4, 2017.<sup>1</sup> On May 16, 2017, the Department postponed the preliminary

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<sup>1</sup> See *Silicon Metal from Australia, Brazil, and Kazakhstan: Initiation of Countervailing Duty Investigations*, 82 FR 16356 (April 4, 2017) (*Initiation Notice*).

determination of this investigation and the revised deadline is now August 7, 2017.<sup>2</sup> For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.<sup>3</sup> Tau-Ken Temir LLP (Tau-Ken Temir), a producer and exporter of silicon metal from Kazakhstan, is the sole mandatory respondent for which we have determined there were exports during the period of investigation to the United States. A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

#### Scope of the Investigation

The product covered by this investigation is silicon metal from Kazakhstan. For a complete description of the scope of this investigation, *see* Appendix I.

#### Scope Comments

In accordance with the preamble to the Department's regulations,<sup>4</sup> the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).<sup>5</sup>

Certain interested parties commented on the scope of the investigation as it appeared in the

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<sup>2</sup> *See Silicon Metal From Australia, Brazil, and Kazakhstan: Postponement of Preliminary Determinations of Countervailing Duty Investigations*, 82 FR 22490 (May 16, 2017).

<sup>3</sup> *See* Memorandum, "Decision Memorandum for the Preliminary Determination of the Countervailing Duty Investigation of Silicon Metal from the Republic of Kazakhstan," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

<sup>4</sup> *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

<sup>5</sup> *See Initiation Notice*.

*Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.<sup>6</sup> The Department preliminarily is not modifying the scope language as it appeared in the *Initiation Notice*. *See* Appendix I.

### Methodology

The Department is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, the Department preliminarily determines that there is a subsidy, *i.e.*, a financial contribution by an “authority” that gives rise to a benefit to the recipient, and that the subsidy is specific.<sup>7</sup>

In its questionnaire responses, Tau-Ken Temir refused to provide the Department with requested information or analyze whether its cross-owned companies received countervailable subsidies.<sup>8</sup> Furthermore, the Government of Kazakhstan’s (GOK)’s initial questionnaire response was wholly deficient with respect to an allegation that electricity was sold to Tau-Ken Temir for less than adequate remuneration, and its supplemental response regarding this allegation was untimely filed.<sup>9</sup> Thus, the Department has relied on facts available as part of its analysis. Additionally, because we find that Tau-Ken Temir and the GOK did not act to the best of their abilities to respond to the Department’s requests for information and, therefore, impeded this investigation, we drew an adverse inference where appropriate in selecting from among the

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<sup>6</sup> *See* Memorandum, “Silicon Metal from Australia, Brazil, Kazakhstan, and Norway: Scope Comments Decision Memorandum for the Preliminary Determinations,” dated June 27, 2017 (Preliminary Scope Decision Memorandum).

<sup>7</sup> *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

<sup>8</sup> *See* Tau-Ken Temir’s Supplemental Affiliation Response, dated May 15, 2017 (Tau-Ken Temir May 15, 2017 SAFFR).

<sup>9</sup> *See* GOK’s June 1, 2017 Initial Questionnaire Response (GOK June 1, 2017 IQR).

facts otherwise available.<sup>10</sup> For further information, *see* “Use of Facts Otherwise Available and Adverse Inferences” in the Preliminary Decision Memorandum.

### Alignment

On March 28, 2017, the Department initiated this countervailing duty (CVD) investigation of silicon metal from Kazakhstan.<sup>11</sup> On the same day, the Department also initiated antidumping duty (AD) investigations of silicon metal from Australia, Brazil, and Norway.<sup>12</sup> This CVD investigation and the AD investigations of Australia, Brazil, and Norway cover the same class or kind of merchandise.

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), the Department is aligning the final CVD determination in this investigation with the final determinations in the companion AD investigations of silicon metal from Australia, Brazil, and Norway based on a request made by the petitioner.<sup>13</sup> Consequently, the final CVD determination will be issued on the same date as the final AD determinations for Australia, Brazil, and Norway, which are currently scheduled to be issued no later than December 18, 2017, unless postponed.

### All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, the Department shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any

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<sup>10</sup> *See* sections 776(a) and (b) of the Act.

<sup>11</sup> *See Initiation Notice*, 82 FR 16356.

<sup>12</sup> *See Silicon Metal from Australia, Brazil, and Norway: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 16352 (April 4, 2017)

<sup>13</sup> *See* Letter from the petitioner, “Silicon Metal from Australia, Brazil, and Kazakhstan; Countervailing Duty Investigations; Request for Alignment of Final Determinations,” dated July 10, 2017.

zero or *de minimis* rates and any rates based entirely under section 776 of the Act. Pursuant to section 705(c)(5)(A)(ii) of the Act, if the individual estimated countervailable subsidy rates established for all exporters and producers individually examined are zero, *de minimis*, or determined based entirely on facts otherwise available, the Department may use any reasonable method to establish the estimated subsidy rate for all-other producers or exporters.

In this investigation, the Department preliminarily assigned a rate based entirely on facts available to Tau-Ken Temir. Accordingly, we are using “any reasonable method” to establish the all-others rate. We find that it is reasonable to rely on the rate established for Tau-Ken Temir as the all-others rate, particularly because there is no other information on the record that can be used to determine an all-others rate.<sup>14</sup>

#### Preliminary Determination

The Department preliminarily determines that the following estimated countervailable subsidy rates exist:

<b>Company</b>	<b>Subsidy Rate</b>
Tau-Ken Temir LLP <sup>15</sup>	120.00 percent
All-Others	120.00 percent

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<sup>14</sup> See, e.g., *Grain-Oriented Electrical Steel from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 59221 (October 1, 2014), and accompanying Issues and Decision Memorandum at Comment 1; *Circular Welded Carbon-Quality Steel Pipe from India: Final Affirmative Countervailing Duty Determination*, 77 FR 64468, 64470 (October 22, 2012); and *Certain Potassium Phosphate Salts from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Termination of Critical Circumstances Inquiry*, 75 FR 30375 (June 1, 2010).

<sup>15</sup> As discussed in the Preliminary Decision Memorandum, the Department has found the following companies to be cross-owned with Tau-Ken Temir LLP: JSC NMC Tau-Ken Samruk and LLP Silicon Mining.

### Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register*. Further, pursuant to 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the rates indicated above.

### Disclosure

Normally, the Department discloses to interested parties the calculations performed in connection with a preliminary determination within five days of the public announcement of, where there is no public announcement, within five days of the date of publication of the notice of preliminary determination in the *Federal Register*, in accordance with 19 CFR 351.224(b). However, because the Department preliminarily applied facts available with an adverse inference to the individually examined company Tau-Ken Temir in this investigation in accordance with section 776 of the Act, and the applied facts available rate is based solely on the corporate income tax rate in Kazakhstan, there are no calculations to disclose.

### Verification

Because both Tau-Ken Temir and the GOK did not provide information requested by the Department, and the Department preliminarily determines that Tau-Ken Temir and the GOK have been uncooperative, we do not intend to conduct verification.

### Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of the

preliminary determination. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.<sup>16</sup> Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

#### International Trade Commission Notification

In accordance with section 703(f) of the Act, the Department will notify the International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will make its final injury determination before the later of 120 days after the date of this preliminary determination or 45 days after the final determination.

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<sup>16</sup> See 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Carole Showers  
Executive Director, Office of Policy  
performing the duties of  
Deputy Assistant Secretary for Enforcement and Compliance

Dated: August 7, 2017



## **Appendix I**

### **Scope of the Investigation**

The scope of this investigation covers all forms and sizes of silicon metal, including silicon metal powder. Silicon metal contains at least 85.00 percent but less than 99.99 percent silicon, and less than 4.00 percent iron, by actual weight. Semiconductor grade silicon (merchandise containing at least 99.99 percent silicon by actual weight and classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2804.61.0000) is excluded from the scope of this investigation.

Silicon metal is currently classifiable under subheadings 2804.69.1000 and 2804.69.5000 of the HTSUS. While HTSUS numbers are provided for convenience and customs purposes, the written description of the scope remains dispositive.

## **Appendix II**

### **List of Topics Discussed in the Preliminary Decision Memorandum**

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Scope Comments
- V. Respondent Selection
- VI. Injury Test
- VII. Use of Facts Otherwise Available and Adverse Inferences
- VIII. Calculation of the All-Others Rate
- IX. Conclusion

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